



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[EPA-HQ-OAR-2010-0750; FRL-9927-58-OAR]**

**RIN 2060-AQ60**

**Reconsideration Petition from Dyno Nobel Inc. on the New Source  
Performance Standards Review for Nitric Acid Plants; Final Action**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action denying petition for  
reconsideration.

**SUMMARY:** This action provides notice that on May 11, 2015, the U.S.  
Environmental Protection Agency (EPA) Administrator, Gina McCarthy,  
signed a letter denying a petition for reconsideration of the final  
New Source Performance Standards (NSPS) for Nitric Acid Plants  
published in the **Federal Register** on August 14, 2012. (77 FR 48433)

**DATES:** Effective **[Insert date of publication in the Federal  
Register.]**

**FOR FURTHER INFORMATION CONTACT:** Mr. Nathan Topham, Sector Policies  
and Programs Division (D243-02), Office of Air Quality Planning and  
Standards, Environmental Protection Agency, Research Triangle Park,  
North Carolina 27711; telephone number: (919) 541-0483; fax number:  
(919) 541-3207; email address: [topham.nathan@epa.gov](mailto:topham.nathan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. How Can I Get Copies of This Document and Other Related**

## **Information?**

This **Federal Register** document, the petition for reconsideration, and the letter denying the petition for reconsideration are available in the docket the EPA established under Docket ID No. EPA-HQ-OAR-2010-0750. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air Docket is (202) 566-1742. This **Federal Register** document, the petition for reconsideration, and the letter denying the petition can also be found on the EPA's Web site at <http://www.epa.gov/ttn/oarpg>.

## **II. Judicial Review**

Any petitions for review of the letter and enclosure denying the petition for reconsideration described in this document must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[insert date 60 days from the date of publication in the**

**Federal Register]**.

### **III. Description of Action**

#### A. Background

The initial Nitric Acid Plants NSPS were promulgated on December 23, 1971 (36 FR 24881) and codified at 40 CFR part 60, subpart G pursuant to section 111 of the Clean Air Act (CAA). Pursuant to section 111(b)(1)(B) of the CAA, we reviewed the NSPS three times over the past few decades. Based on the results of the third review, which we completed in August 2012, we determined it was appropriate to revise the NSPS. The revised NSPS were published in the **Federal Register** on August 14, 2012 (77 FR 48433). The revised NSPS (also referred to as the "final rule" in this document) included a change in the nitrogen oxides (NO<sub>x</sub>) emission limit, from 3.0 pounds of NO<sub>x</sub> per ton of nitric acid production (3.0 lb/T) on a 3-hour basis to 0.5 lb/T on a 30-day average basis, and additional testing and monitoring requirements. The final rule applies to new, modified or reconstructed nitric acid production units (NAPU) that commence construction, modification or reconstruction after October 14, 2011.

Throughout the rulemaking process, we received comments, data and information that supported these revisions. This information is available in the docket for this action. The revisions were proposed on October 14, 2011 (76 FR 63878). We received additional data and comments during the comment period. These data and comments were considered and analyzed and, where appropriate, revisions to the NSPS

were made and incorporated into the final rule published on August 14, 2012.

On October 10, 2012, Dyno Nobel Inc. (DNI) submitted a petition for reconsideration of the final rule for nitric acid plants. Under section 307(d)(7)(B) of the CAA, a petitioner seeking reconsideration must show that the objection or objections raised in its reconsideration petition "is of central relevance to the outcome of the rule." In the EPA's view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised.

After carefully considering the petition and supporting information, the EPA Administrator, Gina McCarthy, denied the petition for reconsideration on May 11, 2015, in a letter to the petitioner. The EPA denied the petition because the information and analysis submitted by DNI is not of central relevance to the outcome of the rule, in that it does not demonstrate that the rule should be reconsidered. A summary of the petition issues and the EPA's responses are provided below. The letter from Administrator McCarthy and the accompanying enclosure, which are available in the docket for this action, explain in greater detail the issues presented in the petition, the EPA's responses to those issues, and the EPA's reasons for the denial.

#### B. Summary of Petition and the EPA'S Responses

The main issues raised by DNI in their petition for reconsideration are the following: They believe the EPA should have

established a subcategory and a different emissions limit for modified or reconstructed nitric acid plants that use non-selective catalytic reduction (NSCR); and they argue the EPA did not meet the legal requirement of having representative emission data to establish a new emission limit.

Regarding the petitioner's argument that the EPA should establish a subcategory for modified or reconstructed plants that use NSCR, we have several reasons why we disagree with this request.

First, the EPA believes it is inappropriate to establish subcategories based on differences in control technologies, so it is inappropriate to establish a subcategory for plants using NSCR.

Second, regarding the petitioner's argument that the EPA did not meet the legal requirement of having representative emission data to set an emission limit, we believe the agency had ample test data to support selective catalytic reduction as the best system of emission reduction and to establish a revised emission limit.

Third, although some units with NSCR may not be able to meet the limit without improving their controls, based on available data we believe it is feasible for some units with NSCR to comply with this NSPS without the need for any additional controls as some existing units with NSCR are already achieving the NSPS emission limit.

Finally, we believe other units with NSCR that are modified or reconstructed, could comply with the NSPS limit by improving their controls at reasonable costs.

Therefore, based on our review and evaluation of all issues raised by the petitioner and relevant available data and information, we have concluded that reconsideration is not warranted.

Dated: May 11, 2015.

Gina McCarthy,  
Administrator.

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